IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.286 OF 2005

Smt. Vijaya Trimbakrao Shirole ... Petitioner

V/s

1) State of Maharashtra & Others ... Respondents/ Accused

Mr. S.M. Kelkar for petitioner

Mr. S.V. Kotwal with Mr. M.S.Mohite for respondents No. 2 to 8

Mr. A.S. Shitole, APP for respondent No.1

Coram : V.M. Kanade, J.

Date : 17th February 2005

P.C.

1 Heard the learned counsel for petitioner and respondents. The learned counsel for petitioner states that petitioner has taken an exception to the order passed by Session Judge dated 26/11/2004 on the applications given by public prosecutor. In the said applications, the prosecution has prayed that P.I.Kohinkar had got recorded the statement of witness Razzak Sayyad under section 164 of Criminal Procedure Code. He further states that P.I.Kohinkar has proved contradictions through his evidence. However, the statement recorded under section 164

of Criminal Procedure Code by J.M.F.C. was not available at the time of his prosecution. The said statement was with J.M.F.C. and it was in duly sealed envelope. The learned counsel for petitioner states that inadvertently the statement recorded in the J.M.F.C. could not be forwarded to the Sesssion Court. He therefore, prays that a said sealed enveloped be directed to be open and prosecution may be allowed to prepare a copy of the same and further the Session Court may be directed to recall a witness Razzak Sayyad for giving his evidence in the court. The Session Court has rejected his application on the ground that information was within the knowledge of Investigating Officer and the prosecution. The learned counsel for petitioner submits that the order passed by the Session Court may be recalled and directions be given to recall a witness viz. Razzak Sayyad.

2 The learned counsel for respondents submit that he has no objection if the said witness Razzak Sayyad is recalled. He submits that merely on the basis of this concession, the Session Court should not be influenced by no objection given by the learned counsel for respondents. In these circumstances, the impugned order dated26.11.2004 is set aside.The Session Court is directed to recall a witness Razzak Sayyad.The Session Court is further directed to commence trial within one month and decide the case on its own merit. Criminal Writ Petition is disposed of on

above term.

(V.M. Kanade, J.)